

## **§ 701.22**

## **7 CFR Ch. VII (1–1–07 Edition)**

### **§ 701.22 Eligibility to file for cost-share assistance.**

Any eligible participant, as defined in this part, who paid part of the cost of an approved practice may file an application for cost-share payment.

### **§ 701.23 Eligible costs.**

(a) Cost-share assistance may be authorized for all reasonable costs incurred in the completion of the practice, up to the maximums provided in §§ 701.26 and 701.27.

(b) Eligible costs shall be limited as follows:

(1) Costs for use of personal equipment shall be limited to those incurred beyond the normal operation of the farm or ranch.

(2) Costs for personal labor shall be limited to personal labor not normally required in the operation of the farm or ranch.

(3) Costs for the use of personal equipment and labor must be less than that charged for such equipment and labor by commercial contractors regularly employed in such areas.

(4) Costs shall not exceed those needed to achieve the minimum performance necessary to resolve the problem being corrected by the practice. Any costs above those levels shall not be considered to be eligible costs for purposes of calculations made under this part.

(c) Costs shall not exceed the practice specifications in § 701.12(d) for cost-share calculations.

(d) The gross amount on which the cost-share eligibility may be computed will not include any costs that were reimbursed by a third party including, but not limited to, an insurance indemnity payment.

(e) Total cost-share payments from all sources shall not exceed the total of eligible costs of the practice to the applicant.

### **§ 701.24 Dividing cost-share among more than one participant.**

(a) For qualifying cost-share assistance under this part, the cost shall be credited to the participant who personally performed the practice or who paid to have it performed by a third party. If a payment or credit was made by one participant to another potential partic-

ipant, paragraph (c) of this section shall apply.

(b) If more than one participant contributed to the performance of the practice, the cost-share assistance for the practice shall be divided among those eligible participants in the proportion they contributed to the performance of the practice. FSA may determine what proportion was contributed by each participant by considering the value of the labor, equipment, or material contributed by each participant and any other factors deemed relevant toward performance.

(c) Allowance by a participant of a credit to another participant through adjustment in rent, cash or other consideration, may be considered as a cost of a practice to the paying party only if FSA determines that such credit is directly related to the practice. An applicant who was fully reimbursed shall be considered as not having contributed to the practice performance.

### **§ 701.25 Practices carried out with aid from ineligible persons.**

Any assistance provided by someone other than the eligible participant, including assistance from a State or Federal agency, shall be deducted from the participant's total costs incurred for the practice for the purpose of computing ECP cost shares. If unusual conditions exist, the Deputy Administrator may waive deduction of such contributions upon a request from the State committee and demonstration of the need for such a waiver.

### **§ 701.26 Maximum cost-share percentage.**

(a) In addition to other restrictions that may be applied by FSA, an ECP participant shall not receive more than 75 percent of the lesser of the participant's total actual cost or of the total allowable costs, as determined by this part, to perform the practice.

(b) However, notwithstanding paragraph (a) of this section, a qualified limited resource producer that participates in the ECP may receive no more than 90 percent of the participant's actual cost to perform the practice or 90 percent of the total allowable costs for the practice as determined under this part.

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(c) In addition to other limitations that apply, in no case shall the ECP payment exceed 50 percent of what the Deputy Administrator has determined is the agricultural value of the affected land.

### **§ 701.27 Maximum ECP payments per person.**

A person, as defined in part 1400 of this title, is limited to a maximum cost-share of \$200,000 per person, per disaster.

### **§§ 701.28–701.30 [Reserved]**

### **§ 701.31 Maintenance and proper use of practices.**

(a) Each participant receiving cost-share assistance is responsible for the required maintenance and proper use of the practice. Some practices have an established life span or minimum period of time during which they are expected to function as a conservation practice with proper maintenance. Cost-share assistance shall not be authorized for normal upkeep or maintenance of any practice.

(b) If a practice is not properly maintained for the established life span, the participant may be required to refund all or part of cost-share assistance received. The Deputy Administrator will determine what constitutes failure to maintain a practice and the amount that must be refunded.

### **§ 701.32 Failure to comply with program provisions.**

Costs may be shared for performance actually rendered even though the minimum requirements otherwise established for a practice have not been satisfied if a reasonable effort was made to satisfy the minimum requirements and if the practice, as performed, will adequately address the need for the practice.

### **§ 701.33 Death, incompetency, or disappearance.**

In case of death, incompetency, or disappearance of any participant, any cost-share payment due shall be paid to the successor, as determined in accordance with part 707 of this chapter.

### **§ 701.34 Appeals.**

Part 11 of this title and part 780 of this chapter apply to determinations made under this part.

### **§ 701.35 Compliance with regulatory measures.**

Participants who perform practices shall be responsible for obtaining the authorities, permits, rights, easements, or other approvals necessary to the performance and maintenance of the practices according to applicable laws and regulations. The ECP participant shall be wholly responsible for any actions taken with respect to the project and shall, in addition, be responsible for returning and refunding any ECP cost shares made, where the purpose of the project cannot be accomplished because of the applicants' lack of clearances or other problems.

### **§ 701.36 Schemes and devices and claims avoidances.**

(a) If FSA determines that a participant has taken any action designed to defeat, or has the effect of defeating, the purposes of this program, the participant shall be required to refund all or part of any of the program payments otherwise due or paid that participant or related person for that particular disaster. These actions include, but are not limited to, failure to properly maintain or deliberately destroying a practice and providing false or misleading information related to practices, costs, or arrangements between entities or individuals that would have an effect on "person" determinations made under this part.

(b) All or any part of cost-share assistance that otherwise would be due any participant may be withheld, or required to be refunded, if the participant has adopted, or participated in, any scheme or device designed to evade the maximum cost-share limitation that applies to the ECP or to evade any other requirement or provision of the program or this part.

(c) If FSA determines that a participant has employed any scheme or device to deprive any other person of cost-share assistance, or engaged in any actions to receive payments under this part that also were designed to avoid claims of the United States or its